

1 FRANCIS O. SCARPULLA (CASB No. 41059)
2 PATRICK B. CLAYTON (CASB No. 240191)
3 LAW OFFICES OF FRANCIS O. SCARPULLA
4 456 Montgomery Street, 17th Floor
5 San Francisco, CA 94111
6 Telephone: (415) 788-7210
7 Facsimile: (415) 788-0706
8 fos@scarpullalaw.com
9 pbc@scarpullalaw.com

6 W. TIMOTHY NEEDHAM (CASB No. 96542)
7 AMELIA F. BURROUGHS (CASB No. 221490)
8 JANSSEN MALLOY LLP
9 730 Fifth Street
10 P.O. Drawer 1288
11 Eureka, CA 95501
12 Telephone: (707) 445-2071
13 Facsimile: (707) 445-8305
14 tneedham@janssenlaw.com
15 aburroughs@janssenlaw.com

11 *Counsel for Plaintiff*

12 KATHY VANGEMERT

13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15 **SAN FRANCISCO DIVISION**

17 KATHY VANGEMERT, on behalf of
18 herself and all others similarly situated,

19 Plaintiff

20 v.

21 STARKIST COMPANY, BUMBLE BEE
22 FOODS, LLC, TRI-UNION SEAFOODS
23 LLC, and KING OSCAR, INC.,

24 Defendants

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff, Kathy Vangemert, by and through her undersigned attorneys, demanding trial by
2 jury, complains and alleges as follows:

3 **I. JURISDICTION AND VENUE.**

4 1. This Complaint is filed pursuant to Sections 4 and 16 of the Clayton Act (15 U.S.C.
5 15, 26) to obtain equitable relief, as well as to recover treble damages, costs of suit, and reasonable
6 attorneys' fees for Defendants' violations of Sections 1 and 3 of the Sherman Act (15 U.S.C. 1, 3).
7 This Court has original federal-question jurisdiction over the Sherman Act claims asserted in this
8 Complaint pursuant to Title 28, United States Code, Sections 1331 and 1337, as well as pursuant
9 to Sections 4 and 16 of the Clayton Act (15 U.S.C. 15, 26). This Court also has jurisdiction over
10 the state-law claims pursuant to Title 28, United States Code, Section 1332(d) and the Class
11 Action Fairness Act of 2005 ("CAFA"), Title 28, United States Code, Section 1711, *et seq.*, which
12 vest original jurisdiction in the District Courts of the United States for any state-law class action
13 where the aggregate amount in controversy exceeds \$5 million and where the citizenship of any
14 member of the class of plaintiffs is different from that of any defendant. The \$5 million amount-
15 in-controversy and diverse-citizenship requirements of CAFA are satisfied in this case.

16 2. Venue is proper in this District pursuant to Sections 4(a) and 12 of the Clayton Act
17 (15 U.S.C. 15, 22), and Title 28, United States Code, Section 1391(b), (c), and (d), because
18 Defendants reside, transact business, are found and/or have agents within this District. Moreover,
19 the events giving rise to Plaintiff's claims occurred in this District, and a substantial portion of the
20 affected interstate trade and commerce described below has been carried out in this District.

21 3. This Court has personal jurisdiction over Defendants because each: (a) transacts
22 business in this District; (b) directly or indirectly sold and delivered Packaged Seafood Products
23 (as hereinafter defined) in this District; (c) had substantial aggregate contacts with this District;
24 and (d) engaged in an illegal price-fixing conspiracy that was directed at, and had the intended
25 effect of causing injury to, persons and entities residing in, located in, or doing business in this
26 District.

1 **II. PARTIES.**

2 **A. Plaintiff.**

3 4. Plaintiff, Kathy Vangemert, is a resident of the State of Florida. During the Class
4 Period, Plaintiff indirectly purchased Packaged Seafood Products (which refers to shelf-stable
5 seafood products – predominantly tuna – that are sold in cans, pouches, or ready-to-eat serving
6 packages (“PSPs”)) for her own use and not for resale from one or more of the Defendants and has
7 suffered damages to her business or property as a result of the antitrust violations alleged herein.

8 **B. Defendants.**

9 5. StarKist Company (“StarKist”), a domestic corporation with its principal place of
10 business located at 225 North Shore Drive, Suite 400, Pittsburgh, PA 15212, is hereby named a
11 Defendant herein. StarKist produces and sells PSPs throughout the United States (including in
12 this District), its territories and the District of Columbia. StarKist is privately owned by Dongwon
13 Enterprise (“Dongwon”), based in South Korea.

14 6. Bumble Bee Foods, LLC (“Bumble Bee”), a domestic corporation with its principal
15 place of business located at 280 Tenth Avenue, San Diego, CA 92101, is hereby named a
16 Defendant herein. Bumble Bee produces and sells PSPs throughout the United States (including
17 in this District), its territories and the District of Columbia. Bumble Bee is privately owned by
18 Lion Capital (“Lion”), based in the United Kingdom.

19 7. Tri-Union Seafoods LLC (“Tri-Union”), a domestic corporation with its principal
20 place of business located at 9330 Scranton Road, Suite 500, San Diego, CA 92121, is hereby
21 named a Defendant herein. Tri-Union produces and sells PSPs throughout the United States
22 (including in this District), its territories and the District of Columbia, and markets these products
23 under the brand name “Chicken of the Sea.” Unless otherwise indicated, Tri-Union will be
24 referred to herein as “Chicken of the Sea” throughout this Complaint.

25 8. King Oscar, Inc. (“King Oscar”), a domestic corporation with its principal place of
26 business located at 3838 Camino Del Rio North, Suite 115, San Diego, CA 92108, is hereby
27 named a Defendant herein. King Oscar produces and sells PSPs throughout the United States
28

(including in this District), its territories and the District of Columbia.

9. Chicken of the Sea and King Oscar are wholly owned by Thai Union Frozen Products, a public company headquartered in Thailand, and will be referred to collectively as “Tri-Union” in this Complaint.

C. Co-Conspirators.

10. Other persons, firms and corporations, presently unknown to Plaintiff, participated as co-conspirators with Defendants in their unlawful restraints of trade alleged herein. When Plaintiff ascertains the identity of any co-conspirator, Plaintiff will seek leave to add that person or entity as a defendant herein.

D. Agents.

11. The acts alleged to have been done by Defendants were authorized, ordered, or performed by their directors, officers, managers, agents, employees, or representatives while actively engaged in the management of each Defendant’s affairs.

III. THE CLASS.

12. Plaintiff brings this action on her own behalf and as a representative of a class pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure seeking equitable and injunctive relief, including disgorgement and/or restitution, as well as costs and attorneys’ fees, on behalf of the following Nationwide Equitable Relief Class (the “Nationwide Class”):

All individuals and entities, who are residents of the United States, its territories and the District of Columbia, and who indirectly purchased Packaged Seafood Products for their own use and not for resale within the United States, its territories and the District of Columbia from any Defendant or any predecessor, subsidiary or affiliate thereof, at any time between January 1, 2005 and the present. Excluded from the Class are all governmental entities and the Defendants, any parent, subsidiary or affiliate thereof, and Defendants’ officers, directors, employees, and their immediate families. Also excluded from this Class is any judge, juror, or court staff assigned to this Class Action, including their immediate families.

13. Additionally, plaintiff brings this action on her own behalf and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to state antitrust, unfair competition, and consumer protection laws as well as common-law unjust

1 enrichment on behalf of the following Classes (the “Damages Classes”):

2 (a) Arizona: All individuals and entities, residing in Arizona,
3 and who indirectly purchased Packaged Seafood Products for their
4 own use and not for resale in the State of Arizona from any
5 Defendant or any predecessor, subsidiary or affiliate thereof, at any
6 time between January 1, 2005 and the present. Excluded from this
7 Class are all governmental entities, the Defendants, any parent,
8 subsidiary or affiliate thereof, and Defendants’ officers, directors,
9 employees, and their immediate families. Also excluded from this
10 Class is any judge, juror, or court staff assigned to this Class Action,
11 including their immediate families.

12 (b) Arkansas: All individuals and entities, residing in Arkansas,
13 and who indirectly purchased Packaged Seafood Products for their
14 own use and not for resale in the State of Arkansas from any
15 Defendant or any predecessor, subsidiary or affiliate thereof, at any
16 time between January 1, 2005 and the present. Excluded from this
17 Class are all governmental entities, the Defendants, any parent,
18 subsidiary or affiliate thereof, and Defendants’ officers, directors,
19 employees, and their immediate families. Also excluded from this
20 Class is any judge, juror, or court staff assigned to this Class Action,
21 including their immediate families.

22 (c) California: All individuals and entities, residing in
23 California, and who indirectly purchased Packaged Seafood
24 Products for their own use and not for resale in the State of
25 California from any Defendant or any predecessor, subsidiary or
26 affiliate thereof, at any time between January 1, 2005 and the
27 present. Excluded from this Class are all governmental entities, the
28 Defendants, any parent, subsidiary or affiliate thereof, and
Defendants’ officers, directors, employees, and their immediate
families. Also excluded from this Class is any judge, juror, or court
staff assigned to this Class Action, including their immediate
families.

(d) District of Columbia: All individuals and entities, residing
in the District of Columbia, and who indirectly purchased Packaged
Seafood Products for their own use and not for resale in the District
of Columbia from any Defendant or any predecessor, subsidiary or
affiliate thereof, at any time between January 1, 2005 and the
present. Excluded from this Class are all governmental entities, the
Defendants, any parent, subsidiary or affiliate thereof, and
Defendants’ officers, directors, employees, and their immediate
families. Also excluded from this Class is any judge, juror, or court
staff assigned to this Class Action, including their immediate
families.

1 (e) Florida: All individuals and entities, residing in Florida, and
2 who indirectly purchased Packaged Seafood Products for their own
3 use and not for resale in the State of Florida from any Defendant or
4 any predecessor, subsidiary or affiliate thereof, at any time between
5 January 1, 2005 and the present. Excluded from this Class are all
6 governmental entities, the Defendants, any parent, subsidiary or
7 affiliate thereof, and Defendants' officers, directors, employees, and
8 their immediate families. Also excluded from this Class is any
9 judge, juror, or court staff assigned to this Class Action, including
10 their immediate families.

11 (f) Hawaii: All individuals and entities, residing in Hawaii, and
12 who indirectly purchased Packaged Seafood Products for their own
13 use and not for resale in the State of Hawaii from any Defendant or
14 any predecessor, subsidiary or affiliate thereof, at any time between
15 January 1, 2005 and the present. Excluded from this Class are
16 Defendants, any parent, subsidiary or affiliate thereof, and all
17 governmental entities, the Defendants' officers, directors,
18 employees, and their immediate families. Also excluded from this
19 Class is any judge, juror, or court staff assigned to this Class Action,
20 including their immediate families.

21 (g) Illinois: All individuals and entities, residing in Illinois, and
22 who indirectly purchased Packaged Seafood Products for their own
23 use and not for resale in the State of Illinois from any Defendant or
24 any predecessor, subsidiary or affiliate thereof, at any time between
25 January 1, 2005 and the present. Excluded from this Class are all
26 governmental entities, the Defendants, any parent, subsidiary or
27 affiliate thereof, and Defendants' officers, directors, employees, and
28 their immediate families. Also excluded from this Class is any
judge, juror, or court staff assigned to this Class Action, including
their immediate families.

(h) Iowa: All individuals and entities, residing in Iowa, and who
indirectly purchased Packaged Seafood Products for their own use
and not for resale in the State of Iowa from any Defendant or any
predecessor, subsidiary or affiliate thereof, at any time between
January 1, 2005 and the present. Excluded from this Class are all
governmental entities, the Defendants, any parent, subsidiary or
affiliate thereof, and Defendants' officers, directors, employees, and
their immediate families. Also excluded from this Class is any
judge, juror, or court staff assigned to this Class Action, including
their immediate families.

(i) Kansas: All individuals and entities, residing in Kansas, and
who indirectly purchased Packaged Seafood Products for their own
use and not for resale in the State of Kansas from any Defendant or

1 any predecessor, subsidiary or affiliate thereof, at any time between
2 January 1, 2005 and the present. Excluded from this Class are all
3 governmental entities, the Defendants, any parent, subsidiary or
4 affiliate thereof, and Defendants' officers, directors, employees, and
5 their immediate families. Also excluded from this Class is any
6 judge, juror, or court staff assigned to this Class Action, including
7 their immediate families.

8 (j) Michigan: All individuals and entities, residing in Michigan,
9 and who indirectly purchased Packaged Seafood Products for their
10 own use and not for resale in the State of Michigan from any
11 Defendant or any predecessor, subsidiary or affiliate thereof, at any
12 time between January 1, 2005 and the present. Excluded from this
13 Class are all governmental entities, the Defendants, any parent,
14 subsidiary or affiliate thereof, and Defendants' officers, directors,
15 employees, and their immediate families. Also excluded from this
16 Class is any judge, juror, or court staff assigned to this Class Action,
17 including their immediate families.

18 (k) Minnesota: All individuals and entities, residing in
19 Minnesota, and who indirectly purchased Packaged Seafood
20 Products for their own use and not for resale in the State of
21 Minnesota from any Defendant or any predecessor, subsidiary or
22 affiliate thereof, at any time between January 1, 2005 and the
23 present. Excluded from this Class are all governmental entities, the
24 Defendants, any parent, subsidiary or affiliate thereof, and
25 Defendants' officers, directors, employees, and their immediate
26 families. Also excluded from this Class is any judge, juror, or court
27 staff assigned to this Class Action, including their immediate
28 families.

(l) Mississippi: All individuals and entities, residing in
Mississippi, and who indirectly purchased Packaged Seafood
Products for their own use and not for resale in the State of
Mississippi from any Defendant or any predecessor, subsidiary or
affiliate thereof, at any time between January 1, 2005 and the
present. Excluded from this Class are all governmental entities, the
Defendants, any parent, subsidiary or affiliate thereof, and
Defendants' officers, directors, employees, and their immediate
families. Also excluded from this Class is any judge, juror, or court
staff assigned to this Class Action, including their immediate
families.

(m) Missouri: All individuals and entities, residing in Missouri,
and who indirectly purchased Packaged Seafood Products for their
own use and not for resale in the State of Missouri from any
Defendant or any predecessor, subsidiary or affiliate thereof, at any
time between January 1, 2005 and the present. Excluded from this

1 Class are all governmental entities, the Defendants, any parent,
2 subsidiary or affiliate thereof, and Defendants' officers, directors,
3 employees, and their immediate families. Also excluded from this
Class is any judge, juror, or court staff assigned to this Class Action,
including their immediate families.

4 (n) Montana: All individuals and entities, residing in Montana,
5 and who indirectly purchased Packaged Seafood Products for their
6 own use and not for resale in the State of Montana from any
7 Defendant or any predecessor, subsidiary or affiliate thereof, at any
8 time between January 1, 2005 and the present. Excluded from this
9 Class are all governmental entities, the Defendants, any parent,
10 subsidiary or affiliate thereof, and Defendants' officers, directors,
11 employees, and their immediate families. Also excluded from this
12 Class is any judge, juror, or court staff assigned to this Class Action,
13 including their immediate families.

14 (o) Nebraska: All individuals and entities, residing in Nebraska,
15 and who indirectly purchased Packaged Seafood Products for their
16 own use and not for resale in the State of Nebraska from any
17 Defendant or any predecessor, subsidiary or affiliate thereof, at any
18 time between January 1, 2005 and the present. Excluded from this
19 Class are all governmental entities, the Defendants, any parent,
20 subsidiary or affiliate thereof, and Defendants' officers, directors,
21 employees, and their immediate families. Also excluded from this
22 Class is any judge, juror, or court staff assigned to this Class Action,
including their immediate families.

23 (p) Nevada: All individuals and entities, residing in Nevada,
24 and who indirectly purchased Packaged Seafood Products for their
25 own use and not for resale in the State of Nevada from any
26 Defendant or any predecessor, subsidiary or affiliate thereof, at any
27 time between January 1, 2005 and the present. Excluded from this
28 Class are all governmental entities, the Defendants, any parent,
subsidiary or affiliate thereof, and Defendants' officers, directors,
employees, and their immediate families. Also excluded from this
Class is any judge, juror, or court staff assigned to this Class Action,
including their immediate families.

(q) New Hampshire: All individuals and entities, residing in
New Hampshire, and who indirectly purchased Packaged Seafood
Products for their own use and not for resale in the State of New
Hampshire from any Defendant or any predecessor, subsidiary or
affiliate thereof, at any time between January 1, 2005 and the
present. Excluded from this Class are all governmental entities, the
Defendants, any parent, subsidiary or affiliate thereof, and
Defendants' officers, directors, employees, and their immediate
families. Also excluded from this Class is any judge, juror, or court

1 staff assigned to this Class Action, including their immediate
2 families.

3 (r) New Mexico: All individuals and entities, residing in New
4 Mexico, and who indirectly purchased Packaged Seafood Products
5 for their own use and not for resale in the State of New Mexico from
6 any Defendant or any predecessor, subsidiary or affiliate thereof, at
7 any time between January 1, 2005 and the present. Excluded from
8 this Class are all governmental entities, the Defendants, any parent,
9 subsidiary or affiliate thereof, and Defendants' officers, directors,
10 employees, and their immediate families. Also excluded from this
11 Class is any judge, juror, or court staff assigned to this Class Action,
12 including their immediate families.

13 (s) New York: All individuals and entities, residing in New
14 York, and who indirectly purchased Packaged Seafood Products for
15 their own use and not for resale in the State of New York from any
16 Defendant or any predecessor, subsidiary or affiliate thereof, at any
17 time between January 1, 2005 and the present. Excluded from this
18 Class are all governmental entities, the Defendants, any parent,
19 subsidiary or affiliate thereof, and Defendants' officers, directors,
20 employees, and their immediate families. Also excluded from this
21 Class is any judge, juror, or court staff assigned to this Class Action,
22 including their immediate families.

23 (t) North Carolina: All individuals and entities, residing in
24 North Carolina, and who indirectly purchased Packaged Seafood
25 Products for their own use and not for resale in the State of North
26 Carolina from any Defendant or any predecessor, subsidiary or
27 affiliate thereof, at any time between January 1, 2005 and the
28 present. Excluded from this Class are all governmental entities, the
Defendants, any parent, subsidiary or affiliate thereof, and
Defendants' officers, directors, employees, and their immediate
families. Also excluded from this Class is any judge, juror, or court
staff assigned to this Class Action, including their immediate
families.

(u) North Dakota: All individuals and entities, residing in North
Dakota, and who indirectly purchased Packaged Seafood Products
for their own use and not for resale in the State of North Dakota
from any Defendant or any predecessor, subsidiary or affiliate
thereof, at any time between January 1, 2005 and the present.
Excluded from this Class are all governmental entities, the
Defendants, any parent, subsidiary or affiliate thereof, and
Defendants' officers, directors, employees, and their immediate
families. Also excluded from this Class is any judge, juror, or court
staff assigned to this Class Action, including their immediate
families.

1 (v) Oregon: All individuals and entities, residing in Oregon, and
2 who indirectly purchased Packaged Seafood Products for their own
3 use and not for resale in the State of Oregon from any Defendant or
4 any predecessor, subsidiary or affiliate thereof, at any time between
5 January 1, 2005 and the present. Excluded from this Class are all
6 governmental entities, the Defendants, any parent, subsidiary or
7 affiliate thereof, and Defendants' officers, directors, employees, and
8 their immediate families. Also excluded from this Class is any
9 judge, juror, or court staff assigned to this Class Action, including
10 their immediate families.

11 (w) South Carolina: All individuals and entities, residing in
12 South Carolina, and who indirectly purchased Packaged Seafood
13 Products for their own use and not for resale in the State of South
14 Carolina from any Defendant or any predecessor, subsidiary or
15 affiliate thereof, at any time between January 1, 2005 and the
16 present. Excluded from this Class are all governmental entities, the
17 Defendants, any parent, subsidiary or affiliate thereof, and
18 Defendants' officers, directors, employees, and their immediate
19 families. Also excluded from this Class is any judge, juror, or court
20 staff assigned to this Class Action, including their immediate
21 families.

22 (x) South Dakota: All individuals and entities, residing in South
23 Dakota, and who indirectly purchased Packaged Seafood Products
24 for their own use and not for resale in the State of South Dakota
25 from any Defendant or any predecessor, subsidiary or affiliate
26 thereof, at any time between January 1, 2005 and the present.
27 Excluded from this Class are all governmental entities, the
28 Defendants, any parent, subsidiary or affiliate thereof, and
Defendants' officers, directors, employees, and their immediate
families. Also excluded from this Class is any judge, juror, or court
staff assigned to this Class Action, including their immediate
families.

(y) Tennessee: All individuals and entities, residing in
Tennessee, and who indirectly purchased Packaged Seafood
Products for their own use and not for resale in the State of
Tennessee from any Defendant or any predecessor, subsidiary or
affiliate thereof, at any time between January 1, 2005 and the
present. Excluded from this Class are all governmental entities, the
Defendants, any parent, subsidiary or affiliate thereof, and
Defendants' officers, directors, employees, and their immediate
families. Also excluded from this Class is any judge, juror, or court
staff assigned to this Class Action, including their immediate
families.

1 (z) Utah: All individuals and entities, residing in Utah, and who
2 indirectly purchased Packaged Seafood Products for their own use
3 and not for resale in the State of Utah from any Defendant or any
4 predecessor, subsidiary or affiliate thereof, at any time between
5 January 1, 2005 and the present. Excluded from this Class are all
6 governmental entities, the Defendants, any parent, subsidiary or
7 affiliate thereof, and Defendants' officers, directors, employees, and
8 their immediate families. Also excluded from this Class is any
9 judge, juror, or court staff assigned to this Class Action, including
10 their immediate families.

11 (aa) Vermont: All individuals and entities, residing in Vermont,
12 and who indirectly purchased Packaged Seafood Products for their
13 own use and not for resale in the State of Vermont from any
14 Defendant or any predecessor, subsidiary or affiliate thereof, at any
15 time between January 1, 2005 and the present. Excluded from this
16 Class are all governmental entities, the Defendants, any parent,
17 subsidiary or affiliate thereof, and Defendants' officers, directors,
18 employees, and their immediate families. Also excluded from this
19 Class is any judge, juror, or court staff assigned to this Class Action,
20 including their immediate families.

21 (bb) Wisconsin: All individuals and entities, residing in
22 Wisconsin, and who indirectly purchased Packaged Seafood
23 Products for their own use and not for resale in the State of
24 Wisconsin from any Defendant or any predecessor, subsidiary or
25 affiliate thereof, at any time between January 1, 2005 and the
26 present. Excluded from this Class are all governmental entities, the
27 Defendants, any parent, subsidiary or affiliate thereof, and
28 Defendants' officers, directors, employees, and their immediate
families. Also excluded from this Class is any judge, juror, or court
staff assigned to this Class Action, including their immediate
families.

14. The Nationwide Class and the Damages Classes are referred to collectively herein
as the "Classes."

15. Due to the nature of the trade and commerce involved, Plaintiff believes that
members of the Classes are sufficiently numerous and geographically dispersed throughout the
United States, its territories and the District of Columbia so that joinder of all members of the
Classes is impracticable.

16. There are questions of law and fact which are common to the claims of Plaintiff
and the Classes, including, but not limited to:

1 a. Whether Defendants and any co-conspirators engaged in a combination or
2 conspiracy to affect, fix, control, raise, stabilize, and/or maintain the prices for PSPs;

3 b. Whether the purpose and/or effect of the acts and omissions alleged herein
4 was to restrain trade, or to affect, fix, control, raise, stabilize, and/or maintain prices for PSPs;

5 c. The existence and duration of the horizontal agreements alleged herein to
6 affect, fix, control, raise, stabilize, and/or maintain the prices for PSPs;

7 d. Whether Defendants violated Sections 1 and 3 of the Sherman Act (15
8 U.S.C. 1, 3), as well as all state statutes pleaded below;

9 e. Whether Plaintiff and members of the Nationwide Equitable Relief Class
10 are entitled to injunctive relief to prevent the continuation or furtherance of the violation of
11 Sections 1 and 3 of the Sherman Act., as well as disgorgement and/or restitution from each
12 Defendant; and

13 f. Whether, and to what extent, the conduct of Defendants caused injury to
14 Plaintiff and members of the Damages Classes, and, if so, the appropriate measure of damages.

15 17. These questions of law and fact common to the members of the Classes
16 predominate over any questions affecting only individual members.

17 18. Plaintiff's claims are typical of the claims of the members of the Classes.

18 19. Plaintiff will fairly and adequately assert and protect the interests of the members
19 of the Classes. Plaintiff's interests are identical with, and not antagonistic to, those of the other
20 members of the Classes.

21 20. Plaintiff is represented by competent counsel who are experienced in the
22 prosecution of antitrust and class action litigation.

23 21. A class action is superior to other available methods for the fair and efficient
24 adjudication of this controversy because:

25 a. The prosecution of separate actions by individual members of the Classes
26 would create a risk of inconsistent or varying adjudications, establishing incompatible standards of
27 conduct for Defendants;

1 b. The members of the Classes are readily definable and one for which
2 purchase records should exist;

3 c. Prosecution as a class action will eliminate the possibility of repetitious
4 litigation;

5 d. Treatment as a class action will permit a large number of similarly-situated
6 persons to adjudicate their common claims in a single forum simultaneously, efficiently, and
7 without the duplication of effort and expense that numerous individual actions would require; and

8 e. Class treatment will permit the adjudication of relatively small claims by
9 many members of the Classes who otherwise could not afford to litigate an antitrust claim such as
10 is asserted in this complaint on an individual basis.

11 22. This class action present no difficulties of management that would preclude its
12 maintenance as a class action.

13 **IV. INTERSTATE TRADE AND COMMERCE.**

14 23. The alleged conspiracy, which began at least as early as January 1, 2005, and
15 continues to the present (the "Class Period"), by the Defendants to affect, fix, control, raise,
16 stabilize, and/or maintain prices for PSPs within the United States, its territories and the District of
17 Columbia in violation of Sections 1 and 3 of the Sherman Antitrust Act (15 U.S.C. 1, 3) directly
18 affected interstate commerce within the United States.

19 24. Throughout the Class Period, there was a continuous and uninterrupted flow of
20 invoices for payment, payments, and other documents essential to the sale of PSPs in interstate
21 commerce between and among offices of each of the Defendants and their respective customers
22 located throughout the United States, its territories and the District of Columbia.

23 25. Throughout the Class Period, Defendants sold and shipped substantial amounts of
24 PSPs in a continuous and uninterrupted flow of interstate commerce throughout the United States,
25 its territories and the District of Columbia

26 26. Throughout the Class Period, Defendants' unlawful activities, as described herein,
27 took place within and substantially affected the flow of interstate commerce and had a direct,
28

1 substantial and reasonably foreseeable effect upon commerce in the United States, its territories
2 and the District of Columbia.

3 **V. NATURE OF TRADE AND COMMERCE.**

4 **A. Overview of the Packaged Seafood Products Industry.**

5 27. PSPs are composed of raw seafood, primarily tuna, that is processed to preserve
6 and enhance flavor, and ensure product safety. Seafood is caught offshore and delivered to
7 canneries. Upon delivery to a processing plant, an initial quality control inspection is performed.
8 Once it has passed the initial quality control inspection, the seafood is prepared for packaging.

9 28. Each package is filled, sealed and cooked under pressure to make the products
10 commercially sterile and give them a long shelf life.

11 29. PSPs are sold, in their original packaging, directly to wholesale distributors, who,
12 in turn, re-sell, also in their original packaging, to grocery stores, restaurants, school districts and
13 other outlets. Additionally, PSPs are sold both directly and indirectly, in their original packaging,
14 to club warehouses, retail groceries, grocery cooperatives, mass merchandisers, and drug stores,
15 among others, who resell PSPs to end-user consumers in their original individual packaging.

16 30. Total United States retail sales of shelf-stable seafood products were \$2.346 billion
17 in 2011 and approximately \$2.4 billion in 2012. Canned tuna represents 73% of these totals.
18 United States retail sales of shelf-stable tuna were \$1.719 billion in 2011 and over \$1.75 billion in
19 2012.

20 31. Defendants are the largest domestic manufacturers of PSPs in a highly concentrated
21 industry. Bumble Bee had about had 29% of the domestic shelf-stable seafood market in 2011,
22 Chicken of the Sea had 18.4% and StarKist had 25.3%. The remaining market share was
23 comprised of smaller companies and private label brands. With respect to shelf-stable tuna,
24 StarKist had 34.6% of the market, Bumble Bee had 27.8% and Chicken of the Sea had 19.4%.

25 **B. The Structure and Characteristics of the Packaged Seafood Products Market.**

26 32. PSPs are commodity products that are sold directly to large retail chains and
27 through grocery wholesalers and distributors. PSPs varieties have similar shelf life, contain
28

1 similar amounts of seafood, and are marketed in cans, pouches, and cups. Therefore, purchasers
2 of PSPs are more likely to be influenced by price when making a purchasing decision.

3 33. There are substantial barriers that preclude, or reduce, entry into the PSPs market,
4 including high start-up costs, manufacturing expertise, access to raw materials, and access to
5 distribution channels. Therefore, Defendants could collectively raise prices without fear of being
6 undercut by new entrants.

7 34. Purchasers routinely source their PSPs from one of the four Defendants. As a
8 result, Defendants dominate the United States PSPs market.

9 35. Defendants possessed significant market power to raise prices for PSPs to supra-
10 competitive levels in the United States.

11 36. There are no economically reasonable substitutes for PSPs. Alternative seafood,
12 such as frozen seafood or fresh seafood, does not have a commensurate shelf life and requires
13 preparation, such as cooking, before it can be consumed.

14 37. There are also economic indications that support the conclusion that there was
15 collusive pricing within the domestic PSPs industry.

16 38. Consumption of PSPs, particularly canned tuna, has declined over the last ten years
17 in the United States. The annual consumption per person was 3.1 lbs. in 2005, but had fallen to
18 2.3 lbs. in 2013. While Americans are buying less canned seafood, they are paying more for what
19 they do buy. Given this decline in consumption of PSPs, the prices for PSPs did not go down.

20 39. Raw material costs do not adequately explain these price increases. While the cost
21 of tuna rose in 2012 and early 2103, it declined thereafter due to excess supply. Despite declining
22 raw material costs, Defendants did not decrease prices.

23 **C. Defendants' Anticompetitive Conduct.**

24 40. On information and belief, Defendants Tri-Union, Bumble Bee and StarKist
25 participated in anticompetitive activities beginning at least as early as January 2005 and
26 continuing to the present. These activities included telephone calls, and frequent in-person
27 meetings at specified locations, including hotels and restaurants. During these meetings and calls,
28

1 Defendants shared sensitive business information, and entered into agreements to fix, raise,
 2 stabilize, and maintain prices of PSPs sold to consumers in the United States.

3 41. On information and belief, senior executives of Defendants met at least twice a
 4 year.

5 42. On information and belief, at other times, top executives regularly discussed prices
 6 and shared sensitive customer information.

7 43. On information and belief, throughout the class period, Defendants communicated
 8 regularly by telephone to discuss prices and sensitive customer information. For example, during
 9 at least one telephone conversation between Bumble Bee and StarKist executives, StarKist
 10 informed Bumble Bee that StarKist and Tri-Union (Chicken of the Sea) were in agreement to raise
 11 prices.

12 44. On information and belief, Defendants discussed pricing, and agreed to coordinate
 13 the timing and amount of price increases for PSPs sold to customers in the United States.
 14 Defendants also agreed to restrict capacity and allocate customers.

15 45. On information and belief, Defendants agreed to exchange, and did exchange,
 16 information during their telephone conversations and meetings for the purpose of monitoring and
 17 enforcing adherence to their agreements.

18 **D. Plaintiff Suffered Antitrust Injury.**

19 46. Defendants' conspiracy had the following effects, among others:

20 a. Price competition has been restrained or eliminated with respect to PSPs;
 21 and

22 b. The prices of PSPs have been affected, fixed, controlled, raised, stabilized,
 23 or maintained at artificially inflated levels.

24 47. During the Class Period, Defendants charged supra-competitive prices for PSPs
 25 sold to Plaintiff. By reason of Defendants' alleged violations of the antitrust laws, Plaintiff and
 26 the members of the Classes have sustained injury to their business or property by having paid
 27 higher prices for PSPs than they would have paid absent Defendants' alleged illegal contract,
 28

1 combination or conspiracy, and, as a result, have suffered damages in an amount to be determined.

2 **VI. ACTIVE CONCEALMENT.**

3 48. Throughout the relevant period, Defendants affirmatively and actively concealed
4 their unlawful conduct.

5 49. Plaintiff and members of the Classes had no knowledge of the combination or
6 conspiracy alleged herein, or of facts sufficient to place them on inquiry notice of the claims set
7 forth herein, until shortly before this Complaint was filed. Plaintiff and the members of the
8 Classes could not have discovered these violations earlier than that time because Defendants'
9 conducted their conspiracy in secret, concealed the nature of their unlawful conduct and acts in
10 furtherance thereof, and actively concealed their activities through various other means and
11 methods designed to avoid detection. In addition, the conspiracy was by its nature self-
12 concealing.

13 50. Plaintiff and the members of the Classes are indirect purchasers of PSPs. They had
14 no direct contact or interaction with the Defendants and had no means from which they could have
15 discovered the combination and conspiracy described in this Complaint prior to shortly before this
16 litigation was commenced.

17 51. No information in the public domain was available to Plaintiff and the members of
18 the Classes prior to the public disclosure of the DOJ's investigation of the PSPs industry, which
19 only recently revealed sufficient information to suggest that the Defendants were involved in a
20 conspiracy to fix prices for PSPs. Plaintiff and the members of the Classes had no means of
21 obtaining any facts or information concerning any aspect of Defendants' dealings with direct
22 purchasers of such products, much less the fact that they and their co-conspirators had engaged in
23 the combination and conspiracy alleged herein.

24 52. Defendants engaged in a successful, illegal price-fixing conspiracy with respect to
25 PSPs, which they affirmatively concealed, in at least the following respects:

26 a. By agreeing among themselves not to discuss publicly, or otherwise reveal,
27 the nature and substance of the acts and communications in furtherance of their illegal scheme,
28

1 and by agreeing to expel those who failed to do so; and

2 b. By agreeing on other means to avoid detection of their illegal conspiracy to
3 fix the prices of PSPs.

4 53. As a result of Defendants' active concealment of their conspiracy, Plaintiff and the
5 Classes assert the tolling of any applicable statute of limitations affecting the rights of action of
6 Plaintiff and members of the Classes.

7 **VII. VIOLATIONS ALLEGED.**

8 **Count I: Violation of Sections 1 and 3 of the Sherman Act (15 U.S.C. 1, 3)**

9 54. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth
10 herein.

11 55. Defendants and their co-conspirators engaged in a continuing contract,
12 combination, and conspiracy to artificially fix, raise, maintain, and/or stabilize the prices of PSPs
13 within the United States, its territories, and the District of Columbia in violation of Sections 1 and
14 3 of the Sherman Act (15 U.S.C. 1, 3).

15 56. Defendants and their co-conspirators agreed to, and did in fact, restrain trade or
16 commerce by affecting, fixing, controlling, raising, stabilizing, and/or maintaining at artificial and
17 non-competitive levels, the prices of such PSPs.

18 57. In formulating and effectuating their contract, combination or conspiracy,
19 Defendants and their co-conspirators engaged in anticompetitive activities, the purpose and effect
20 of which were to artificially affect, fix, control, raise, stabilize, and/or maintain the price of PSPs.

21 58. The illegal combination and conspiracy alleged herein had the following effects,
22 among others::

23 a. The prices charged by Defendants to, and paid by, Plaintiff and members of
24 the Classes for PSPs were affected, controlled, fixed, raised, stabilized and/or maintained at
25 artificially high and non-competitive levels;

26 b. Plaintiff and members of the Classes have been deprived of free and open
27 competition in the purchase of PSPs;
28

1 c. Plaintiff and members of the Classes have been required to pay more for
 2 PSPs than they would have paid in a competitive marketplace absent Defendants' price-fixing
 3 conspiracy; and

4 d. Competition in the sale of PSPs has been restrained, suppressed or
 5 eliminated.

6 59. As a direct and proximate result of Defendants' conduct, Plaintiff and members of
 7 the Classes have been injured and damaged in their business and property in an amount to be
 8 determined according to proof.

9 60. These violations are continuing and will continue unless enjoined by this Court.

10 61. Pursuant to Section 16 of the Clayton Act (15 U.S.C. 26), Plaintiff and the
 11 Nationwide Class seek the issuance of an injunction against Defendants, preventing and
 12 restraining the violations alleged herein, as well as obtaining restitution or disgorgement from
 13 each Defendant.

14 **Count II: Violation of State Antitrust Statutes**

15 62. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth
 16 herein.

17 63. As to the Arizona Damages Class, Plaintiff further alleges as follows:

18 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
 19 by affecting, fixing, controlling and/or maintain, at artificial and/or non-competitive levels, the
 20 prices at which PSPs were sold, distributed or obtained in Arizona.

21 b. Defendants' combinations or conspiracies had the following effects: (1)
 22 PSPs price competition was restrained, suppressed, and eliminated throughout Arizona; (2) PSPs
 23 prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
 24 levels throughout Arizona; (3) Arizona Purchasers paid supra-competitive, artificially inflated
 25 prices for PSPs.

26 c. During the Class Period, Defendants' illegal conduct substantially affected
 27 Arizona commerce.

1 d. As a direct and proximate result of Defendants' unlawful conduct, Arizona
2 Purchasers have been injured in their business and property and are threatened with further injury.

3 e. By reason of the foregoing, Defendants have entered into agreements in
4 restraint of trade in violation of Ariz. Rev. Stat. §§ 44-1401, *et seq.*¹ Accordingly, Arizona
5 Purchasers seek all forms of relief available under Ariz. Rev. Stat. §§ 44-1401, *et seq.*

6 64. As to the California Damages Class, Plaintiff further alleges as follows:

7 a. Beginning at a time presently unknown to Plaintiff, but at least as early as
8 January 1, 2005, and continuing thereafter to the present, Defendants and their co-conspirators
9 entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce
10 described above in violation of Section 16720, California Business and Professional Professions
11 Code. Defendants, and each of them, have acted in violation of Section 16720 to fix, raise,
12 stabilize and maintain prices of PSPs at supra-competitive levels.

13 b. The aforesaid violations of Section 16720, California Business and
14 Professions Code, consisted, without limitation, of a continuing unlawful trust and concert of
15 action among the Defendants and their co-conspirators, the substantial terms of which were to fix,
16 raise, maintain and stabilize the prices of, and to allocate markets for Packaged Seafood Products.

17 c. For the purpose of forming and effectuating the unlawful trust, the
18 Defendants and their co-conspirators have done those things which they combined and conspired
19 to do, including but in no way limited to the acts, practices, and course of conduct set forth above
20 and the following: (1) fixing, raising, stabilizing and/or maintaining the price of PSPs; and (2)
21 allocating among themselves the production of PSPs.

22 d. The combination and conspiracy alleged has had, *inter alia*, the following
23 effects: (1) price competition in the sale of PSPs has been restrained, suppressed, and/or
24 eliminated in the State of California; (2) prices for PSPs sold by Defendants and their co-

25 _____
26 ¹ In compliance with Arizona's Antitrust Act, Ariz. Rev. Stat. § 44-1415, Plaintiff mailed a copy
27 of this complaint to the Arizona Attorney General on November 18, 2015.
28

1 conspirators have been fixed, raised, maintained and stabilized at artificially high, non-competitive
2 levels in the State of California; and (3) those who purchased PSPs directly or indirectly from
3 Defendants and their co-conspirators have been deprived of the benefit of free and open
4 competition.

5 e. As a direct and proximate result of Defendants' unlawful conduct,
6 California Purchasers have been injured in their business and property in that they paid more for
7 PSPs than they otherwise would have paid in the absence of Defendants' unlawful conduct. As a
8 result of Defendants' violation of Section 16720, *et seq.* of the California Business and
9 Professions Code, Plaintiff and the California Purchasers seek treble damages and the costs of suit,
10 including reasonable attorneys' fees, pursuant to Section 16750(a) of the California Business and
11 Professions Code.

12 65. As to the District of Columbia Damages Class, Plaintiff further alleges as follows:

13 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
14 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
15 prices at which PSPs were sold, distributed or obtained in the District of Columbia.

16 b. Defendants' combinations or conspiracies had the following effects: (1)
17 PSPs price competition was restrained, suppressed, and eliminated throughout the District of
18 Columbia; (2) PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at
19 artificially high levels throughout District of Columbia; (3) District of Columbia Purchasers paid
20 supra-competitive, artificially inflated prices for PSPs.

21 c. During the Class Period, Defendants' illegal conduct substantially affected
22 District of Columbia commerce.

23 d. As a direct and proximate result of Defendants' unlawful conduct, District
24 of Columbia Purchasers have been injured in their business and property and are threatened with
25 further injury.

26 e. By reason of the foregoing, Defendants have entered into agreements in
27 restraint of trade in violation of District of Columbia Code Ann. §§ 28-4501, *et seq.* Accordingly,
28

District of Columbia Purchasers seek all forms of relief available under District of Columbia Code Ann §§ 44-1401, *et seq.*

66. As to the Hawaii Damages Class, Plaintiff further alleges as follows:

a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at which PSPs were sold, distributed or obtained in Hawaii.

b. Defendants' combinations or conspiracies had the following effects: (1) PSPs price competition was restrained, suppressed, and eliminated throughout Hawaii; (2) PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high levels throughout Hawaii; (3) Hawaii Purchasers paid supra-competitive, artificially inflated prices for PSPs.

c. During the Class Period, Defendants' illegal conduct substantially affected Hawaii commerce.

d. As a direct and proximate result of Defendants' unlawful conduct, Hawaii Purchasers have been injured in their business and property and are threatened with further injury.

e. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Hawaii Code, H.R.S. § 480-4.² Accordingly, Hawaii Purchasers seek all forms of relief available under Hawaii Code, H.R.S. § 480-1, *et seq.*

67. As to the Illinois Damages Class, Plaintiff further alleges as follows:

a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at which PSPs were sold, distributed or obtained in Illinois.

b. Defendants' combinations or conspiracies had the following effects: (1) PSPs price competition was restrained, suppressed, and eliminated throughout Illinois; (2) PSPs

² In compliance with Hawaii Rev. Stat. § 480-13.3, Plaintiff served a copy of this Complaint on the Hawaii Attorney General.

1 prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
 2 levels throughout Illinois; (3) Illinois Purchasers paid supra-competitive, artificially inflated prices
 3 for PSPs.

4 c. During the Class Period, Defendants' illegal conduct substantially affected
 5 Illinois commerce.

6 d. As a direct and proximate result of Defendants' unlawful conduct, Illinois
 7 Purchasers have been injured in their business and property and are threatened with further injury.

8 e. By reason of the foregoing, Defendants have entered into agreements in
 9 restraint of trade in violation of Illinois Compiled Statutes ("ILCS") 740 ILCS 10/1, *et seq.*

10 Accordingly, Illinois Purchasers seek all forms of relief available under 740 ILCS 10/1, *et seq.*

11 68. As to the Iowa Damages Class, Plaintiff further alleges as follows:

12 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
 13 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
 14 prices at which PSPs were sold, distributed or obtained in Iowa.

15 b. Defendants' combinations or conspiracies had the following effects: (1)
 16 PSPs price competition was restrained, suppressed, and eliminated throughout Iowa; (2) PSPs
 17 prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
 18 levels throughout Iowa; (3) Iowa Purchasers paid supra-competitive, artificially inflated prices for
 19 PSPs.

20 c. During the Class Period, Defendants' illegal conduct substantially affected
 21 Iowa commerce.

22 d. As a direct and proximate result of Defendants' unlawful conduct, Iowa
 23 Purchasers have been injured in their business and property and are threatened with further injury.

24 e. By reason of the foregoing, Defendants have entered into agreements in
 25 restraint of trade in violation of Iowa Code, H.R.S. §§ 553.1, *et seq.* Accordingly, Iowa

26 Purchasers seek all forms of relief available under Iowa Code, H.R.S. § 553.1.

27 69. As to the Kansas Damages Class, Plaintiff further alleges as follows:
 28

1 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
2 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
3 prices at which PSPs were sold, distributed or obtained in Kansas.

4 b. Defendants' combinations or conspiracies had the following effects: (1)
5 PSPs price competition was restrained, suppressed, and eliminated throughout Kansas; (2) PSPs
6 prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
7 levels throughout Kansas; (3) Kansas Purchasers paid supra-competitive, artificially inflated prices
8 for PSPs.

9 c. During the Class Period, Defendants' illegal conduct substantially affected
10 Kansas commerce.

11 d. As a direct and proximate result of Defendants' unlawful conduct, Kansas
12 Purchasers have been injured in their business and property and are threatened with further injury.

13 e. By reason of the foregoing, Defendants have entered into agreements in
14 restraint of trade in violation of Kansas Stat. Ann. §§ 50-101, *et seq.* Accordingly, Kansas
15 Purchasers seek all forms of relief available under Kansas Stat. Ann. §§ 50-101, *et seq.*

16 70. As to the Michigan Damages Class, Plaintiff further alleges as follows:

17 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
18 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
19 prices at which PSPs were sold, distributed or obtained in Michigan.

20 b. Defendants' combinations or conspiracies had the following effects: (1)
21 PSPs price competition was restrained, suppressed, and eliminated throughout Michigan; (2) PSPs
22 prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
23 levels throughout Michigan; (3) Michigan Purchasers paid supra-competitive, artificially inflated
24 prices for PSPs.

25 c. During the Class Period, Defendants' illegal conduct substantially affected
26 Michigan commerce.

27 d. As a direct and proximate result of Defendants' unlawful conduct, Michigan
28

1 Purchasers have been injured in their business and property and are threatened with further injury.

2 e. By reason of the foregoing, Defendants have entered into agreements in
3 restraint of trade in violation of Michigan Comp. Laws Ann. §§ 445.771, *et seq.* Accordingly,
4 Michigan Purchasers seek all forms of relief available under Michigan Comp. Laws Ann. §§
5 445.771, *et seq.*

6 71. As to the Minnesota Damages Class, Plaintiff further alleges as follows:

7 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
8 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
9 prices at which PSPs were sold, distributed or obtained in Minnesota.

10 b. Defendants' combinations or conspiracies had the following effects: (1)
11 PSPs price competition was restrained, suppressed, and eliminated throughout Minnesota; (2)
12 PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
13 levels throughout Minnesota; (3) Minnesota Purchasers paid supra-competitive, artificially
14 inflated prices for PSPs.

15 c. During the Class Period, Defendants' illegal conduct substantially affected
16 Minnesota commerce.

17 d. As a direct and proximate result of Defendants' unlawful conduct,
18 Minnesota Purchasers have been injured in their business and property and are threatened with
19 further injury.

20 e. By reason of the foregoing, Defendants have entered into agreements in
21 restraint of trade in violation of Minnesota Stat. §§ 325D.50, *et seq.* Accordingly, Minnesota
22 Purchasers seek all forms of relief available under Minnesota Stat. §§ 325D.50, *et seq.*

23 72. As to the Mississippi Damages Class, Plaintiff further alleges as follows:

24 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
25 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
26 prices at which PSPs were sold, distributed or obtained in Mississippi.

27 b. Defendants' combinations or conspiracies had the following effects: (1)
28

1 PSPs price competition was restrained, suppressed, and eliminated throughout Mississippi; (2)
 2 PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
 3 levels throughout Mississippi; (3) Mississippi Purchasers paid supra-competitive, artificially
 4 inflated prices for PSPs.

5 c. During the Class Period, Defendants' illegal conduct substantially affected
 6 Mississippi commerce.

7 d. As a direct and proximate result of Defendants' unlawful conduct,
 8 Mississippi Purchasers have been injured in their business and property and are threatened with
 9 further injury.

10 e. By reason of the foregoing, Defendants have entered into agreements in
 11 restraint of trade in violation of Mississippi Code Ann. § 75-21-1, *et seq.* Accordingly,
 12 Mississippi Purchasers seek all forms of relief available under Mississippi Code Ann. § 75-21-1,
 13 *et seq.*

14 73. As to the Montana Damages Class, Plaintiff further alleges as follows:

15 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
 16 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
 17 prices at which PSPs were sold, distributed or obtained in Montana.

18 b. Defendants' combinations or conspiracies had the following effects: (1)
 19 PSPs price competition was restrained, suppressed, and eliminated throughout Montana; (2) PSPs
 20 prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
 21 levels throughout Montana; (3) Montana Purchasers paid supra-competitive, artificially inflated
 22 prices for PSPs.

23 c. During the Class Period, Defendants' illegal conduct substantially affected
 24 Montana commerce.

25 d. As a direct and proximate result of Defendants' unlawful conduct, Montana
 26 Purchasers have been injured in their business and property and are threatened with further injury.

27 e. By reason of the foregoing, Defendants have entered into agreements in
 28

1 restraint of trade in violation of Montana Code Annotated 2015 §§ 30-14-205, *et seq.*

2 Accordingly, Montana Purchasers seek all forms of relief available under Montana Code

3 Annotated 2015 §§ 30-14-205, *et seq.*

4 74. As to the Nebraska Damages Class, Plaintiff further alleges as follows:

5 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
6 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
7 prices at which PSPs were sold, distributed or obtained in Nebraska.

8 b. Defendants' combinations or conspiracies had the following effects: (1)
9 PSPs price competition was restrained, suppressed, and eliminated throughout Nebraska; (2) PSPs
10 prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
11 levels throughout Nebraska; (3) Nebraska Purchasers paid supra-competitive, artificially inflated
12 prices for PSPs.

13 c. During the Class Period, Defendants' illegal conduct substantially affected
14 Nebraska commerce.

15 d. As a direct and proximate result of Defendants' unlawful conduct, Nebraska
16 Purchasers have been injured in their business and property and are threatened with further injury.

17 e. By reason of the foregoing, Defendants have entered into agreements in
18 restraint of trade in violation of Neb. Rev. Stat. §§ 59-801, *et seq.* Accordingly, Nebraska
19 Purchasers seek all forms of relief available under Neb. Rev. Stat. §§ 59-801, *et seq.*,

20 75. As to the Nevada Damages Class, Plaintiff further alleges as follows:

21 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
22 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
23 prices at which PSPs were sold, distributed or obtained in Nevada.

24 b. Defendants' combinations or conspiracies had the following effects: (1)
25 PSPs price competition was restrained, suppressed, and eliminated throughout Nevada; (2) PSPs
26 prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
27 levels throughout Nevada; (3) Nevada Purchasers paid supra-competitive, artificially inflated
28

1 prices for PSPs.

2 c. During the Class Period, Defendants' illegal conduct substantially affected
3 Nevada commerce.

4 d. As a direct and proximate result of Defendants' unlawful conduct, Nevada
5 Purchasers have been injured in their business and property and are threatened with further injury.

6 e. By reason of the foregoing, Defendants have entered into agreements in
7 restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A, *et seq.*³ Accordingly, Nevada
8 Purchasers seek all forms of relief available under Nevada Rev. Stat. Ann. §§ 598A, *et seq.* .

9 76. As to the New Hampshire Damages Class, Plaintiff further alleges as follows:

10 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
11 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
12 prices at which PSPs were sold, distributed or obtained in New Hampshire.

13 b. Defendants' combinations or conspiracies had the following effects: (1)
14 PSPs price competition was restrained, suppressed, and eliminated throughout New Hampshire;
15 (2) PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially
16 high levels throughout New Hampshire; (3) New Hampshire Purchasers paid supra-competitive,
17 artificially inflated prices for PSPs.

18 c. During the Class Period, Defendants' illegal conduct substantially affected
19 New Hampshire commerce.

20 d. As a direct and proximate result of Defendants' unlawful conduct, New
21 Hampshire Purchasers have been injured in their business and property and are threatened with
22 further injury.

23 e. By reason of the foregoing, Defendants have entered into agreements in
24 restraint of trade in violation of New Hampshire Consumer Protection Act, N.H. Rev. Stat. § 358-

25
26 ³ In compliance with the Nevada Unfair Trade Practices Act, Nev. Rev. Stat. Ann. §598A.210(3),
27 Plaintiff mailed a copy of this complaint to the Nevada Attorney General on November 18, 2015
28

A:2, *et seq.* Accordingly, New Hampshire Purchasers seek all forms of relief available under New Hampshire N.H. Rev. Stat. §§ 358-A:2, *et seq.*

77. As to the New Mexico Damages Class, Plaintiff further alleges as follows:

a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at which PSPs were sold, distributed or obtained in New Mexico.

b. Defendants' combinations or conspiracies had the following effects: (1) PSPs price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high levels throughout New Mexico; (3) New Mexico Purchasers paid supra-competitive, artificially inflated prices for PSPs.

c. During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce.

d. As a direct and proximate result of Defendants' unlawful conduct, New Mexico Purchasers have been injured in their business and property and are threatened with further injury.

e. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq.* Accordingly, New Mexico Purchasers seek all forms of relief available under New Mexico Stat. Ann §§ 57-1-1, *et seq.*

78. As to the New York Damages Class, Plaintiff further alleges as follows:

a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at which PSPs were sold, distributed or obtained in New York.

b. Defendants' combinations or conspiracies had the following effects: (1) PSPs price competition was restrained, suppressed, and eliminated throughout New York; (2) PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high

1 levels throughout New York; (3) New York Purchasers paid supra-competitive, artificially inflated
2 prices for PSPs.

3 c. During the Class Period, Defendants' illegal conduct substantially affected
4 New York commerce.

5 d. As a direct and proximate result of Defendants' unlawful conduct, New
6 York Purchasers have been injured in their business and property and are threatened with further
7 injury.

8 e. By reason of the foregoing, Defendants have entered into agreements in
9 restraint of trade in violation of New York General Business Law § 340, *et seq.*⁴ Accordingly,
10 New York Purchasers seek all forms of relief available under New York General Business Law §
11 340, *et seq.*

12 79. As to the North Carolina Damages Class, Plaintiff further alleges as follows:

13 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
14 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
15 prices at which PSPs were sold, distributed or obtained in North Carolina.

16 b. Defendants' combinations or conspiracies had the following effects: (1)
17 PSPs price competition was restrained, suppressed, and eliminated throughout North Carolina; (2)
18 PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
19 levels throughout North Carolina; (3) North Carolina Purchasers paid supra-competitive,
20 artificially inflated prices for PSPs.

21 c. During the Class Period, Defendants' illegal conduct substantially affected
22 North Carolina commerce.

23 d. As a direct and proximate result of Defendants' unlawful conduct, North
24 Carolina Purchasers have been injured in their business and property and are threatened with

25 _____
26 ⁴ In compliance with New York's Gen Bus. Law § 340(5), Plaintiff mailed a copy of this
27 complaint to the New York State Attorney General on November 18, 2015.
28

1 further injury.

2 e. By reason of the foregoing, Defendants have entered into agreements in
3 restraint of trade in violation of North Carolina Gen. Stat. §§ 75-1, *et seq.* Accordingly, North
4 Carolina Purchasers seek all forms of relief available under North Carolina Gen. Stat. §§ 75-1, *et*
5 *seq.*

6 80. As to the North Dakota Damages Class, Plaintiff further alleges as follows:

7 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
8 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
9 prices at which PSPs were sold, distributed or obtained in North Dakota.

10 b. Defendants' combinations or conspiracies had the following effects: (1)
11 PSPs price competition was restrained, suppressed, and eliminated throughout North Dakota; (2)
12 PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
13 levels throughout North Dakota; (3) North Dakota Purchasers paid supra-competitive, artificially
14 inflated prices for PSPs.

15 c. During the Class Period, Defendants' illegal conduct substantially affected
16 North Dakota commerce.

17 d. As a direct and proximate result of Defendants' unlawful conduct, North
18 Dakota Purchasers have been injured in their business and property and are threatened with further
19 injury.

20 e. By reason of the foregoing, Defendants have entered into agreements in
21 restraint of trade in violation of North Dakota Cent. Code §§ 51-08.1-01, *et seq.* Accordingly,
22 North Dakota Purchasers seek all forms of relief available under North Dakota Cent. Code §§ 51-
23 08.1-01, *et seq.*

24 81. As to the Oregon Damages Class, Plaintiff further alleges as follows:

25 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
26 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
27 prices at which PSPs were sold, distributed or obtained in Oregon.

b. Defendants' combinations or conspiracies had the following effects: (1) PSPs price competition was restrained, suppressed, and eliminated throughout Oregon; (2) PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high levels throughout Oregon; (3) Oregon Purchasers paid supra-competitive, artificially inflated prices for PSPs.

c. During the Class Period, Defendants' illegal conduct substantially affected Oregon commerce.

d. As a direct and proximate result of Defendants' unlawful conduct, Oregon Purchasers have been injured in their business and property and are threatened with further injury.

e. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Oregon Revised Statutes ("ORS") §§ 646.705, *et seq.*⁵ Accordingly, Oregon Purchasers seek all forms of relief available under ORS §§ 646.705, *et seq.*

82. As to the South Carolina Damages Class, Plaintiff further alleges as follows:

a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at which PSPs were sold, distributed or obtained in South Carolina.

b. Defendants' combinations or conspiracies had the following effects: (1) PSPs price competition was restrained, suppressed, and eliminated throughout South Carolina; (2) PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high levels throughout South Carolina; (3) South Carolina Purchasers paid supra-competitive, artificially inflated prices for PSPs.

c. During the Class Period, Defendants' illegal conduct substantially affected South Carolina commerce.

d. As a direct and proximate result of Defendants' unlawful conduct, South

⁵ In compliance with Oregon Rev. Stat. § 340(5), Plaintiff mailed a copy of this complaint to the Oregon Attorney General on November 18, 2015.

1 Carolina Purchasers have been injured in their business and property and are threatened with
2 further injury.

3 e. By reason of the foregoing, Defendants have entered into agreements in
4 restraint of trade in violation of South Carolina Code of Laws §§ 39-3-10, *et seq.* Accordingly,
5 South Carolina Purchasers seek all forms of relief available under South Carolina Code of Laws
6 §§ 39-3-10, *et seq.*

7 83. As to the South Dakota Damages Class, Plaintiff further alleges as follows:

8 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
9 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
10 prices at which PSPs were sold, distributed or obtained in South Dakota.

11 b. Defendants' combinations or conspiracies had the following effects: (1)
12 PSPs price competition was restrained, suppressed, and eliminated throughout South Dakota; (2)
13 PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
14 levels throughout South Dakota; (3) South Dakota Purchasers paid supra-competitive, artificially
15 inflated prices for PSPs.

16 c. During the Class Period, Defendants' illegal conduct substantially affected
17 South Dakota commerce.

18 d. As a direct and proximate result of Defendants' unlawful conduct, South
19 Dakota Purchasers have been injured in their business and property and are threatened with further
20 injury.

21 e. By reason of the foregoing, Defendants have entered into agreements in
22 restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1, *et seq.* Accordingly,
23 South Dakota Purchasers seek all forms of relief available under South Dakota Codified Laws
24 Ann. §§ 37-1, *et seq.*

25 84. As to the Tennessee Damages Class, Plaintiff further alleges as follows:

26 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
27 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
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1 prices at which PSPs were sold, distributed or obtained in Tennessee.

2 b. Defendants' combinations or conspiracies had the following effects: (1)
3 PSPs price competition was restrained, suppressed, and eliminated throughout Tennessee; (2)
4 PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
5 levels throughout Tennessee; (3) Tennessee Purchasers paid supra-competitive, artificially inflated
6 prices for PSPs.

7 c. During the Class Period, Defendants' illegal conduct substantially affected
8 Tennessee commerce.

9 d. As a direct and proximate result of Defendants' unlawful conduct,
10 Tennessee Purchasers have been injured in their business and property and are threatened with
11 further injury.

12 e. By reason of the foregoing, Defendants have entered into agreements in
13 restraint of trade in violation of Tennessee Code Ann. §§ 47-25-101, *et seq.* Accordingly,
14 Tennessee Purchasers seek all forms of relief available under Tennessee Code Ann. §§ 47-25-101,
15 *et seq.*

16 85. As to the Vermont Damages Class, Plaintiff further alleges as follows:

17 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
18 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
19 prices at which PSPs were sold, distributed or obtained in Vermont.

20 b. Defendants' combinations or conspiracies had the following effects: (1)
21 PSPs price competition was restrained, suppressed, and eliminated throughout Vermont; (2) PSPs
22 prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
23 levels throughout Vermont; (3) Vermont Purchasers paid supra-competitive, artificially inflated
24 prices for PSPs.

25 c. During the Class Period, Defendants' illegal conduct substantially affected
26 Vermont commerce.

27 d. As a direct and proximate result of Defendants' unlawful conduct, Vermont
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Purchasers have been injured in their business and property and are threatened with further injury.

e. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Vermont Stat. Ann. 9 §§ 2453, *et seq.* Accordingly, Vermont Purchasers seek all forms of relief available under Vermont Stat. Ann. 9 §§ 2453, *et seq.*

86. As to the Wisconsin Damages Class, Plaintiff further alleges as follows:

a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at which PSPs were sold, distributed or obtained in Wisconsin.

b. Defendants' combinations or conspiracies had the following effects: (1) PSPs price competition was restrained, suppressed, and eliminated throughout Wisconsin; (2) PSPs prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high levels throughout Wisconsin; (3) Wisconsin Purchasers paid supra-competitive, artificially inflated prices for PSPs.

c. During the Class Period, Defendants' illegal conduct substantially affected Wisconsin commerce.

d. As a direct and proximate result of Defendants' unlawful conduct, Wisconsin Purchasers have been injured in their business and property and are threatened with further injury.

e. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Wisconsin Stat. §§ 133.01, *et seq.* Accordingly, Wisconsin Purchasers seek all forms of relief available under Wisconsin Stat. §§ 133.01, *et seq.*

Count III: State Consumer Protection, Consumer Fraud and Unfair Competition Statutes

87. Plaintiff incorporates by reference the preceding paragraphs as if fully set forth herein.

88. As to the Arizona Damages Class, Plaintiff further alleges as follows:

a. Beginning on a date unknown to Plaintiff, but at least as early as 2005 and continuing thereafter to the present, Defendants agreed to and did in fact act, use or employ

1 deception, deceptive or unfair acts or practices, fraud, false pretenses, false promises,
 2 misrepresentations or concealment, suppression or omissions of material facts with intent that
 3 others rely on such concealment, suppression or omissions, in connection with the sale or
 4 advertisement of merchandise.

5 b. Defendants' combinations or conspiracies had the following effects: (1)
 6 PSPs price competition was restrained, suppressed, and eliminated throughout Arizona; (2) PSP
 7 prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
 8 levels throughout Arizona; (3) Arizona purchasers paid supra-competitive, artificially inflated
 9 prices for PSPs; (4) Arizona plaintiffs were damaged as a result of Defendants' unlawful practices;
 10 and (5) Arizona plaintiffs were damaged at least in the amount by which Defendants illegally
 11 overcharged Arizona purchasers for Defendants' PSPs.

12 c. During the Class Period, Defendants' illegal conduct substantially affected
 13 Arizona commerce.

14 d. As a direct and proximate result of Defendants' unlawful conduct, Arizona
 15 purchasers have been injured in their business and property and are threatened with further injury.

16 e. Defendants' conduct was willful, wanton and/or reckless and showing a
 17 reckless indifference to the interests of others evincing the state of mind for the imposition of
 18 punitive damages.

19 f. By reason of the foregoing Defendants have entered into agreements in
 20 restraint of trade in violation of Arizona's Consumer Fraud statute, Ariz. Rev. Stat. Ann. § 44-
 21 1522. Accordingly, Arizona purchasers seek all forms of relief available under Ariz. Rev. Stat.
 22 Ann. §§ 44-1521, *et seq.* and the common law of Arizona.

23 89. As to the Arkansas Damages Class, Plaintiff further alleges as follows:

24 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
 25 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
 26 prices at which PSPs were sold, distributed or obtained in Arkansas.

27 b. The foregoing conduct constitutes "unfair methods of competition," and
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1 “unfair or deceptive acts or practices in the conduct of any trade or commerce” within the meaning
2 of Arkansas Code Ann. § 4-75-301, *et seq.*

3 c. During the Class Period, Defendants’ illegal conduct substantially affected
4 Arkansas commerce and consumers.

5 d. Defendants’ unlawful conduct had the following effects: (1) PSPs price
6 competition was restrained, suppressed, and eliminated throughout Arkansas; (2) PSPs prices were
7 raised, fixed, maintained and stabilized at artificially high levels throughout Arkansas; (3)
8 Arkansas Purchasers were deprived of free and open competition; and (4) Florida Purchasers paid
9 supra-competitive, artificially inflated prices for PSPs.

10 e. As a direct and proximate result of Defendants’ unlawful conduct, Arkansas
11 Purchasers have been injured and are threatened with further injury.

12 f. Defendants have engaged in unfair competition or unfair or deceptive acts
13 or practices in violation of Arkansas Code Ann. § 4-75-301, *et seq.* and accordingly, Arkansas
14 Purchasers seek all relief available under that statute.

15 90. As to the California Damages Class, Plaintiff further alleges as follows:

16 a. Beginning on a date unknown to Plaintiff, but at least as early as January 1,
17 2005, and continuing thereafter to the present, Defendants committed and continue to commit acts
18 of unfair competition, as defined by Sections 17200, *et seq.* of the California Business and
19 Professions Code by engaging in the acts and practices specified above.

20 b. This claim is instituted pursuant to Sections 17203 and 17204 of the
21 California Business and Professions Code, to obtain restitution from these Defendants for acts, as
22 alleged herein, that violated Section 17200 of the California Business and Professions Code,
23 commonly known as the Unfair Competition Law.

24 c. The Defendants’ conduct as alleged herein violated Section 17200. The
25 acts, omissions, misrepresentations, practices and non-disclosures of Defendants, as alleged
26 herein, constituted a common continuous and continuing course of conduct of unfair competition
27 by means of unfair, unlawful and/or fraudulent business practices within the meaning of California
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1 Business and Professions Code, Section 17200, *et seq.*, including, but not limited to, the
2 following: (1) the violations of Section 1 of the Sherman Act, as set forth above; (2) the violations
3 of Section 16720, *et seq.*, of the California Business and Professions Code, set forth above.

4 d. Defendants' acts, omissions, misrepresentations, practices and non-
5 disclosures, as described above, whether or not in violation of Section 16720, *et seq.* of the
6 California Business and Professions Code, and whether or not concerted or independent acts, are
7 otherwise unfair, unconscionable, unlawful or fraudulent; Defendants' acts and practices are unfair
8 to consumers of PSPs in the State of California and throughout the United States, within the
9 meaning of Section 17200, California Business and Professions Code; and

10 e. Defendants' acts and practices are fraudulent or deceptive within the
11 meaning of Section 17200 of the California Business and Professions Code.

12 f. California Plaintiff and each of the California Damages Class members are
13 entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation,
14 and benefits that may have been obtained by Defendants as a result of such business acts or
15 practices;

16 g. The illegal conduct alleged herein is continuing and there is no indication
17 that Defendants will not continue such activity into the future

18 h. The unlawful and unfair business practices of Defendants, and each of
19 them, as described above, have caused and continue to cause Plaintiff and California Purchasers to
20 pay supra-competitive and artificially-inflated prices for PSPs. Plaintiff and California Purchasers
21 suffered injury in fact and lost money or property as a result of such unfair competition.

22 i. The conduct of Defendants as alleged in this Complaint violates Section
23 17200 of the California Business and Professions Code;

24 j. As alleged in this Complaint, Defendants and their co-conspirators have
25 been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair
26 competition. Plaintiff and the California Purchasers are accordingly entitled to equitable relief
27 including restitution and/or disgorgement of all revenues, earnings, profits, compensation and
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1 benefits which may have been obtained by Defendants as a result of such business practices,
 2 pursuant to California Business and Professions Code, Section 17200, *et seq.*

3 91. As to the Florida Damages Class, Plaintiff further alleges as follows:

4 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
 5 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
 6 prices at which PSPs were sold, distributed or obtained in Florida.

7 b. The foregoing conduct constitutes “unfair methods of competition,” and
 8 “unfair or deceptive acts or practices in the conduct of any trade or commerce” within the meaning
 9 of Florida Stat. § 501.204.

10 c. During the Class Period, Defendants’ illegal conduct substantially affected
 11 Florida commerce and consumers.

12 d. Defendants’ unlawful conduct had the following effects: (1) PSPs price
 13 competition was restrained, suppressed, and eliminated throughout Florida; (2) PSPs prices were
 14 raised, fixed, maintained and stabilized at artificially high levels throughout Florida; (3) Florida
 15 Purchasers were deprived of free and open competition; and (4) Florida Purchasers paid supra-
 16 competitive, artificially inflated prices for PSPs.

17 e. As a direct and proximate result of Defendants’ unlawful conduct, Florida
 18 Purchasers have been injured and are threatened with further injury.

19 f. Defendants have engaged in unfair competition or unfair or deceptive acts
 20 or practices in violation of Florida Stat. § 501.201, *et seq.* and accordingly, Florida Purchasers
 21 seek all relief available under that statute.

22 92. As to the Hawaii Damages Class, Plaintiff further alleges as follows:

23 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
 24 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
 25 prices at which PSPs were sold, distributed or obtained in Hawaii.

26 b. The foregoing conduct constitutes “unfair methods of competition,” and
 27 “unfair or deceptive acts or practices in the conduct of any trade or commerce” within the meaning
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1 of Hawaii Rev. Stat. § 480-2.

2 c. During the Class Period, Defendants' illegal conduct substantially affected
3 Hawaii commerce and consumers.

4 d. Defendants' unlawful conduct had the following effects: (1) PSPs price
5 competition was restrained, suppressed, and eliminated throughout Hawaii; (2) PSPs prices were
6 raised, fixed, maintained and stabilized at artificially high levels throughout Hawaii; (3) Hawaii
7 Purchasers were deprived of free and open competition; and (4) Hawaii Purchasers paid supra-
8 competitive, artificially inflated prices for PSPs.

9 e. As a direct and proximate result of Defendants' unlawful conduct, Hawaii
10 Purchasers have been injured and are threatened with further injury.

11 f. Defendants have engaged in unfair competition or unfair or deceptive acts
12 or practices in violation of Hawaii Rev. Stat. § 480-2. Accordingly, Hawaii Purchasers seek all
13 relief available under Hawaii Rev. Stat. §§ 480, *et seq.*

14 93. As to the Missouri Damages Class, Plaintiff further alleges as follows:

15 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
16 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
17 prices at which PSPs were sold, distributed or obtained in Missouri.

18 b. Defendants' combinations or conspiracies had the following effects: (1)
19 PSPs price competition was restrained, suppressed, and eliminated throughout Missouri; (2) PSPs
20 prices were affected, fixed, controlled, raised, stabilized and/or maintained at artificially high
21 levels throughout Missouri; (3) Missouri Purchasers paid supra-competitive, artificially inflated
22 prices for PSPs.

23 c. During the Class Period, Defendants' illegal conduct substantially affected
24 Missouri commerce.

25 d. As a direct and proximate result of Defendants' unlawful conduct, Missouri
26 Purchasers have been injured in their business and property and are threatened with further injury.

27 e. By reason of the foregoing, Defendants have entered into agreements in
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1 restraint of trade in violation of Missouri Merchandising Protection Act, Mo. Rev. Stat. § 407.020.
2 Accordingly, Missouri Purchasers seek all forms of relief available under Missouri Mo. Rev. Stat.
3 §§ 407.020, *et seq.*

4 94. As to the Nebraska Damages Class, Plaintiff further alleges as follows:

5 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
6 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
7 prices at which PSPs were sold, distributed or obtained in Nebraska.

8 b. The foregoing conduct constitutes “unfair methods of competition,” and
9 “unfair or deceptive acts or practices I the conduct of any trade or commerce” within the meaning
10 of Neb. Rev. Stat. § 59-1602.

11 c. During the Class Period, Defendants’ illegal conduct substantially affected
12 Nebraska commerce and consumers.

13 d. Defendants’ unlawful conduct had the following effects: (1) PSPs price
14 competition was restrained, suppressed, and eliminated throughout Nebraska; (2) PSPs prices were
15 raised, fixed, maintained and stabilized at artificially high levels throughout Nebraska; (3)
16 Nebraska Purchasers were deprived of free and open competition; and (4) Nebraska Purchasers
17 paid supra-competitive, artificially inflated prices for PSPs.

18 e. As a direct and proximate result of Defendants’ unlawful conduct, Nebraska
19 Purchasers have been injured and are threatened with further injury.

20 f. Defendants have engaged in unfair competition or unfair or deceptive acts
21 or practices in violation of Neb. Rev. Stat. §§ 59-1601, *et seq.*, and accordingly, Nebraska
22 Purchasers seek all relief available under those statutes.

23 95. As to the New Mexico Damages Class, Plaintiff further alleges as follows:

24 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
25 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
26 prices at which PSPs were sold, distributed or obtained in New Mexico.

27 b. Defendants also took efforts to conceal their agreements from New Mexico
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1 purchasers.

2 c. The foregoing conduct constitutes “unfair methods of competition,” and
3 “unfair or deceptive acts or practices in the conduct of any trade or commerce” within the meaning
4 of New Mexico Stat. § 57-12-3, in that such conduct resulted in a gross disparity between the
5 value received by New Mexico Purchasers and the prices paid by them for PSPs as set forth in
6 New Mexico Stat. §57-12-2E.

7 d. During the Class Period, Defendants’ illegal conduct substantially affected
8 New Mexico commerce and consumers.

9 e. Defendants’ unlawful conduct had the following effects: (1) PSPs price
10 competition was restrained, suppressed, and eliminated throughout New Mexico; (2) PSPs prices
11 were raised, fixed, maintained and stabilized at artificially high levels throughout New Mexico;
12 (3) New Mexico Purchasers were deprived of free and open competition; and (4) New Mexico
13 Purchasers paid supra-competitive, artificially inflated prices for PSPs.

14 f. As a direct and proximate result of Defendants’ unlawful conduct, New
15 Mexico Purchasers have been injured and are threatened with further injury.

16 g. Defendants have engaged in unfair competition or unfair or deceptive acts
17 or practices in violation of New Mexico Stat. §§ 57-12-1, *et seq.*, and accordingly, New Mexico
18 Purchasers seek all relief available under those statutes.

19 96. As to the New York Damages Class, Plaintiff further alleges as follows:

20 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
21 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
22 prices at which PSPs were sold, distributed or obtained in New York.

23 b. Defendants also took efforts to conceal their agreements from New York
24 Purchasers.

25 c. Defendants’ illegal conduct substantially affected New York commerce and
26 consumers.

27 d. The conduct of Defendants as described herein constitutes consumer-
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1 oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349, which
2 resulted in consumer injury and broad adverse impact on the public at large, and harmed the public
3 interest of New York State in an honest marketplace in which economic activity is conducted in a
4 competitive manner.

5 e. As consumers, New York Purchasers were targets of the conspiracy.

6 f. Defendants' secret agreements as described herein were not known to
7 members of the New York Damages Class.

8 g. Defendants made public statements about the price of PSPs that Defendants
9 knew would be seen by New York Purchasers; such statements either omitted material information
10 that rendered these statement that they made materially misleading or affirmatively misrepresented
11 the real cause of price increases for PSPs; and Defendants alone possessed material information
12 that was relevant to consumers, but failed to provide the information.

13 h. Because of Defendants' unlawful trade practices in the State of New York,
14 there was a broad impact on New York Purchases who indirectly purchased PSPs; and New York
15 Purchasers have been injured because they have paid more for PSPs than they would have paid in
16 the absence of Defendants' unlawful trade acts and practices, and are threatened with further
17 injury.

18 i. Because of Defendants' unlawful trade practices in the State of New York,
19 New York Purchasers who indirectly purchased PSPs were misled to believe that they were
20 paying a fair price for PSPs, or that the price increases for PSPs were for valid business reasons.

21 j. Defendants knew that their unlawful trade practices with respect to pricing
22 of PSPs would have an impact on New York Purchasers and not just Defendants' direct
23 customers;

24 k. Defendants knew that their unlawful trade practices with respect to pricing
25 of PSPs would have a broad impact, causing members of the New York Damages Class who
26 indirectly purchased PSPs to be injured by paying more for PSPs than they would have paid in the
27 absence of Defendants' unlawful trade acts and practices.
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1 l. During the Class Period, each of the Defendants named herein, directly or
2 indirectly though affiliates they dominated and controlled, manufactured, sold and/or distributed
3 PSPs in New York.

4 m. New York Purchasers seek actual damages for their injuries caused by these
5 violations in an amount to be determined at trial. Without prejudice to their contention that
6 Defendants' unlawful conduct was willful and knowing, New York Purchasers do not seek in this
7 action to have those damages trebled pursuant to N.Y. Gen. Bus. Law § 349(h).

8 97. As to the North Carolina Damages Class, Plaintiff further alleges as follows:

9 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
10 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
11 prices at which PSPs were sold, distributed or obtained in North Carolina.

12 b. Defendants also took efforts to conceal their agreements from North
13 Carolina Purchasers.

14 c. The conduct of Defendants as described herein constitutes consumer-
15 oriented deceptive acts or practices within the meaning of North Carolina Gen. Stat. 75-1.1, *et*
16 *seq.*, which resulted in consumer injury and broad adverse impact on the public at large, and
17 harmed the public interest of North Carolina consumers in an honest marketplace in which
18 economic activity is conducted in a competitive manner.

19 d. During the Class Period, Defendants' illegal conduct substantially affected
20 North Carolina commerce and consumers.

21 e. Defendants' unlawful conduct had the following effects: (1) PSPs price
22 competition was restrained, suppressed, and eliminated throughout North Carolina; (2) PSPs
23 prices were raised, fixed, maintained and stabilized at artificially high levels throughout North
24 Carolina; (3) North Carolina Purchasers were deprived of free and open competition; and (4)
25 North Carolina Purchasers paid supra-competitive, artificially inflated prices for PSPs.

26 f. As a direct and proximate result of Defendants' unlawful conduct, North
27 Carolina Purchasers have been injured and are threatened with further injury.
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g. During the Class Period, each of the Defendants named herein, directly or indirectly through affiliates they dominated and controlled, manufactured, sold and/or distributed PSPs in North Carolina.

h. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*, and accordingly, North Carolina Purchasers seek all relief available under that statute.

98. As to the Utah Damages Class, Plaintiff further alleges as follows:

a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the prices at which PSPs were sold, distributed or obtained in Utah.

b. The foregoing conduct constitutes “unfair methods of competition,” and “unfair or deceptive acts or practices in the conduct of any trade or commerce” within the meaning of Utah Code § 13-5-2.5.

c. During the Class Period, Defendants’ illegal conduct substantially affected Utah commerce and consumers.

d. Defendants’ unlawful conduct had the following effects: (1) PSPs price competition was restrained, suppressed, and eliminated throughout Utah; (2) PSPs prices were raised, fixed, maintained and stabilized at artificially high levels throughout Utah; (3) Utah Purchasers were deprived of free and open competition; and (4) Utah Purchasers paid supra-competitive, artificially inflated prices for PSPs.

e. As a direct and proximate result of Defendants’ unlawful conduct, Utah Purchasers have been injured and are threatened with further injury.

f. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code Ann., § 13-5-2.5, *et seq.*⁶ and accordingly, Utah Purchasers

⁶ In compliance with Utah Code Ann., § 76-10-3109(9), Plaintiff mailed a copy of this complaint to the Utah Attorney General on November 18, 2015.

1 seek all relief available under that statute.

2 99. As to the Vermont Damages Class, Plaintiff further alleges as follows:

3 a. Defendants agreed to, and did in fact, act in restraint of trade or commerce
4 by affecting, fixing, controlling and/or maintaining, at artificial and/or non-competitive levels, the
5 prices at which PSPs were sold, distributed or obtained in Vermont.

6 b. Defendants deliberately failed to disclose material facts to Vermont
7 Purchasers concerning Defendants' unlawful activities and artificially inflated prices for PSPs.
8 Defendants owed a duty to disclose such facts and considering the relative lack of sophistication
9 of the average, non-business consumer, Defendants breached that duty by their silence.
10 Defendants misrepresented to all consumers during the Class Period that Defendants' PSPs prices
11 were competitive and fair.

12 c. Because of Defendants' unlawful and unscrupulous trade practices in
13 Vermont, Vermont Purchasers who indirectly purchased PSPs were misled or deceived to believe
14 that they were paying a fair price of PSPs or that the price increases for PSPs were for valid
15 business reasons.

16 d. Defendants' unlawful conduct had the following effects: (1) PSPs price
17 competition was restrained, suppressed, and eliminated throughout Vermont; (2) PSPs prices were
18 raised, fixed, maintained and stabilized at artificially high levels throughout Vermont; (3) Vermont
19 Purchasers were deprived of free and open competition; and (4) Vermont Purchasers paid supra-
20 competitive, artificially inflated prices for PSPs.

21 e. As a direct and proximate result of Defendants' illegal conduct, Vermont
22 Purchasers suffered an ascertainable loss of money or property as a result of Defendants' use or
23 employment of unconscionable and deceptive commercial practices as set forth above. That loss
24 was caused by Defendants' willful and deceptive conduct, as described herein.

25 f. Defendants' misleading conduct and unconscionable activities constitutes
26 unfair competition or unfair or deceptive acts or practices in violation of Vermont Stat. Ann. Title
27 9, § 2451, *et seq.*, and accordingly, Vermont Purchasers seek all relief available under that statute.
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1 **Count IV: Unjust Enrichment and Disgorgement of Profits**

2 100. Plaintiff incorporates and realleges, as though fully set forth herein, each and every
3 allegation set forth in the preceding paragraphs of this Complaint.

4 101. Defendants have been unjustly enriched through overpayments by Plaintiff and the
5 members of the Classes and the resulting profits.

6 102. Under common law principles of unjust enrichment, Defendants should not be
7 permitted to retain the benefits conferred *via* overpayments by class members in the following
8 states: Arizona, California, District of Columbia, Iowa, Michigan, New Mexico and South
9 Dakota.

10 103. Plaintiff and the members of the Classes in each of the states listed above seek
11 disgorgement of all profits resulting from such overpayments and establishment of a constructive
12 trust from which Plaintiff and the members of the Classes may seek restitution.

13 **VIII. PRAYER FOR RELIEF.**

14 104. WHEREFORE, Plaintiff prays:

15 A. That the Court determine that this action may be maintained as a class action under
16 Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure and direct that reasonable
17 notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure be
18 given to the members of the Classes;

19 B. That the Court adjudge and decree that the contract, combination and conspiracy
20 alleged herein is a *per se* unreasonable restraint of trade in violation of Section 1 of the Sherman
21 Act (15 U.S.C. 1);

22 C. That the Court adjudge and decree that the contract, combination and conspiracy
23 alleged herein is us an unreasonable restraint of trade in violation of all state antitrust, and/or
24 consumer protection laws alleged above;

25 D. That the Court enter judgment against Defendants, jointly and severally, in favor of
26 Plaintiff and the members of the Classes;

27 E. That the Court award Plaintiff and the members of the state-wide Damages Classes
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1 damages, including treble damages where appropriate, as well as restitution and/or disgorgement
2 for members of the Nationwide Equitable Relief Classes;

3 F. That the Court award Plaintiff and the members of the Class attorneys' fees and
4 costs as well as pre-judgment and post-judgment interest as permitted by law pursuant to Section 4
5 of the Clayton Act (15 U.S.C. 15) and appropriate state statutes;

6 G. That Defendants and their co-conspirators, their respective successors, assigns,
7 parents, subsidiaries, affiliates and transferees, and their respective officers, directors, agents and
8 employees, and all other persons acting or claiming to act on behalf of Defendants or their co-
9 conspirators, or in concert with them, be permanently enjoined and restrained from, in any
10 manner, directly or indirectly, continuing, maintain or renewing the combination, conspiracy,
11 agreement, understanding or concert of action, or adopting any practice, plan, program or design
12 having a similar purpose or affect in restraining competition pursuant to Section 16 of the Clayton
13 Act (15 U.S.C. 26); and

14 H. That the Court award Plaintiff and the members of the Classes such and other
15 further relief as may be deemed necessary and appropriate.

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IX. JURY TRIAL DEMAND.

Plaintiff requests a jury trial on all matters so triable.

DATED: November 18, 2015

By: /s/ Francis O. Scarpulla
Francis O. Scarpulla

FRANCIS O. SCARPULLA (CASB No. 41059)
PATRICK B. CLAYTON (CASB No. 240191)
LAW OFFICES OF FRANCIS O. SCARPULLA
456 Montgomery Street, 17th Floor
San Francisco, CA 94111
Telephone: (415) 788-7210
Facsimile: (415) 788-0706
fos@scarpullalaw.com
pbc@scarpullalaw.com

W. TIMOTHY NEEDHAM (CASB No. 96542)
AMELIA F. BURROUGHS (CASB No. 221490)
JANSSEN MALLOY LLP
730 Fifth Street
P.O. Drawer 1288
Eureka, CA 95501
Telephone: (707) 445-2071
Facsimile: (707) 445-8305
tneedham@janssenlaw.com
aburroughs@janssenlaw.com

Counsel for Plaintiff
KATHY VANGEMERT